IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 911 of 1990
With
FIRST APPEAL No. 912 of 1990
To
FIRST APPEAL No. 913 of 1990
with
CROSS OBJECTIONS NO. 14500 OF 1990
in
FIRST APPEAL NO. 912 OF 1990
with
CROSS OBJECTIONS NO. 14501 OF 1990
in
FIRST APPEAL NO. 913 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
GOVINDBHAI KHODABHAI & 4 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MR KV SHELAT for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2, 4,
DELETED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/08/2007

COMMON ORAL JUDGMENT

1. The Insurance Company, being aggrieved by the joint award dated 26th April, 1998 passed by the MAC Tribunal [Aux] Ahmedabad [Rural] at Mirzapur in MAC Cases No. 464 of 1983, 465 of 1983 and 466 of 1983, is before this Court with a submission that the learned Claims Tribunal was absolutely unjustified in making the award against the interest of the Insurance Company.
2. Shri Rajni H. Mehta, learned counsel for the appellant has raised a solitary ground in support of the appeal contending that when the passengers were traveling in a goods vehicle, the Insurance Company would not be liable. He places strong reliance upon the judgment of the Supreme Court in the matter of New India Assurance Company v. Vedwati [AIR 2007 1334]. Shri K.V. Shelat, learned counsel for the respondent in First Appeals No. 912 and 913 of 1990 submitted that these claimants have filed

Cross Objections seeking enhancement in the compensation amount. It is not in dispute before me that the claimants were passengers in the goods vehicle. If this is an admitted position, then, in view of the above judgment of the Supreme Court, the Insurance Company is required to be exonerated, it is accordingly exonerated. All the three appeals are allowed. No costs.

3. So far as the Cross Objections are concerned, Shri Shelat, learned counsel for the respondents-claimants submitted that these Cross Objections are still maintainable against the driver and the owner of the offending vehicle. In the opinion of this Court, Cross Objections against the co-respondents are not maintainable except in a case where Cross Objections are maintainable against the appellants and as a result of grant of Cross Objections, liability of the co-respondent comes into existence. In the present matter, as the Cross Objections against the appellant are not maintainable, the same cannot be maintained.

4. The Insurance Company has already deposited the

amount with the Claims Tribunal. If such amount is not fully disbursed, then, the balance would be given back to the Insurance Company and in case, it is partly given or fully given, then too, to the extent of payment of the compensation amount to the claimants, the Insurance Company would be entitled to recover the said amount from the driver and owner of the offending vehicle with interest at 6% per annum from the date of the deposit till the date of realization.

[R.S. GARG, J.]

pirzada/-